

From: Matthew M. Burke
To: Microsoft ATR
Date: 1/25/02 11:21am
Subject: Microsoft Settlement

My name is Matthew Burke. I am a U.S. citizen residing at 7109 Wayne Dr., Annandale, VA 22003. For over 10 years I have been a professional software engineer, an Assistant Professor of Mathematics and Computer Science, and a graduate student in Mathematics and Computer Science.

After following the Microsoft anti-trust case, reading the proposed final judgement (PFJ), and commentaries on the proceedings, I have come to the conclusion that the PFJ is not in the public interest for the following reasons:

1. The PFJ contains misleading and overly narrow definitions.

The definition of "API" in the PFJ is so narrow that many of the most important APIs are not covered.

The definition of "Microsoft Middleware" is so narrow that the next version of Windows would not be covered.

The PFJ fails to take into account the fact that Microsoft is phasing out their version of Java with .NET. Therefore, the provision to allow users to replace Microsoft Java with a competitor's version is meaningless.

The PFJ does not cover Windows XP Tablet PC Edition, Windows CE, Pocket PC or the X-Box although all these products are based on essentially the same technology---the Win32 API ---and all these products are supported by what the court has determined to be illegal uses of monopoly power.

The PFJ fails to require advance notice of technical requirements. This allows Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline and not inform ISVs.

The PFJ requires Microsoft to release API documentation to ISVs so they can create compatible middleware. But they are not required to do so until after the deadline for the ISVs to demonstrate that their middleware is compatible.

The PFJ requires Microsoft to release API documentation. The PFJ, however, prohibits competitors from using this documentation to help make their operating systems compatible with Windows.

The PFJ does not require Microsoft to release documentation about the format of Microsoft Office documents. This is despite the fact that Microsoft has been illegally using their Operating System monopoly to force consumers to use their Office products as well.

The PFJ does not require Microsoft to list which software patents protect the Windows APIs. This leaves Windows-compatible operating systems in an uncertain state: are they, or are they not infringing on Microsoft software patents? This can scare away potential users.

2. The PFJ fails to prohibit anticompetitive license terms currently used by Microsoft

Microsoft currently uses restrictive licensing terms to keep Open Source apps from running on Windows.

Microsoft currently uses restrictive licensing terms to keep Windows apps from running on competing operating systems.

Microsoft's enterprise license agreements (used by large companies, state governments, and universities) charge by the number of computers which could run a Microsoft operating system -- even for computers running Linux. (Similar licenses to OEMs were once banned by the 1994 consent decree.)

3. The PFJ fails to prohibit intentional incompatibilities historically used by Microsoft.

Microsoft has in the past inserted intentional incompatibilities in its applications to keep them from running on competing operating systems.

4. The PFJ Fails to prohibit anticompetitive practices towards OEMs.

The PFJ allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

The PFJ allows Microsoft to discriminate against small OEMs -- including regional 'white box' OEMs which are historically the most willing to install competing operating systems -- who ship competing software.

The PFJ allows Microsoft to offer discounts on Windows (MDAs) to OEMs based on criteria like sales of Microsoft Office or Pocket PC systems. This allows Microsoft to leverage its monopoly on Intel-compatible operating systems to increase its market share in other areas.

5. The PFJ as currently written appears to lack an effective enforcement mechanism.

Therefore I conclude that the PFJ allows and encourages significant anticompetitive practices to continue and is consequently not in the public interest. The PFJ should not be adopted until the above issues are meaningfully addressed.

Thank you for your attention in this matter. I would be more than willing to discuss these issues further and may be contacted at the address in the first paragraph of this letter, by return email, or by phone (703-645-9751).

Sincerely,

Matthew Burke